

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

UNITED STATES OF AMERICA) Criminal Case No. 5:06-cr-00029-5
)
v.) ORDER
)
AMY RENEE MCCORKLE) By: Hon. Glen E. Conrad
) United States District Judge

Defendant filed a motion to reduce sentence based on Guideline Amendment Twelve. See docket no. 422. Defendant seeks a reduction of her sentence pursuant to 28 U.S.C. § 3582(c)(2), USSG § 1B1.10, and USSG § 4A1.2(c). In support of the motion, defendant asserts that USSG § 1B1.10 requires retroactive application of an amendment to USSG § 4A1.2(c) that became effective in November of 2007. Although defendant references Amendment 12 in the title of her motion, the amendment upon which she relies is Amendment 709. See USSG § 4A1.2(c) (2007), historical note; see also USSG App. C, Amendment 709 (2007).

Section 1B1.10 provides, in pertinent part: "Amendments covered by this policy statement are listed in Appendix C as follows: 126, 130, 156, 176, 269, 329, 341, 371, 379, 380, 433, 454, 461, 484, 488, 490, 499, 505, 506, 516, 591, 599, 606, 657, 702, and 706 as amended by 711." USSG § 1B1.10(c) (Supp.2008). Amendment 709, the amendment under which the proposed Amendment 12 became effective, is not listed in section 1B1.10(c) and, therefore, may not be applied retroactively on a § 3582(c)(2) motion. United States v. McHan, 386 F.3d 620 (4th Cir. 2004) (citing United States v. Armstrong, 347 F.3d 905, 909 (5th Cir. 2003) ("We agree with several of our sister circuits [2d, 3d, 6th, 8th, 10th] that have established a bright-line rule that amendments in § 3582(c) motions may be retroactively applied *solely where expressly listed under § 1B1.10(c)*" (emphasis

added)). Thus, contrary to defendant's contention, USSG § 1B1.10 does not warrant retroactive application of Amendment 709. Accordingly, it is now **ORDERED AND ADJUDGED** that defendant's motion to reduce sentence based on Guideline Amendment Twelve [docket no. 422] is hereby **DENIED.***

The Clerk is directed to send certified copies of this order to the following: defendant, the United States Probation Office, and counsel of record for defendant and the United States.

ENTER: This 15th day of May, 2008.



United States District Judge

* The court notes that, on March 12, 2008, the court granted defendant's 18 U.S.C. § 3582(c)(2) motion seeking recalculation of her sentencing guidelines range pursuant to Amendment 706 to the United States Sentencing Guidelines, regarding crack cocaine sentencing, and reduced her sentence accordingly.